



RECEIVED

APR 22 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE CENTER 1600

Applicant: Eric W. Triplett et al. )

Serial No.: 10/005,412 )

Group Art Unit: 1616

Filed: December 3, 2001 )

Examiner: S. Clardy

Title: Bacterial Inoculants for  
Enhancing Plant Growth )

Commissioner for Patents  
Washington, D.C., 20231

Sir:

### RESPONSE TO RESTRICTION REQUIREMENT

In response to the request for restriction mailed on March 19, 2003 (hereinafter referred to as "Request for Restriction") in connection with the above-identified application, Applicants herewith elect to prosecute the claims in Group I (claims 1-5 and 14). Also, Applicants elect to prosecute the species, specifically, the bacterial strain, *Gluconacetobacter diazotrophicus* PA15 (ATCC No. 49037).

This election is made with traverse with respect to the restriction imposed upon the species (namely, the various microbiological species or strains). The Examiner states that the application contains claims to "various patentably distinct species, i.e, various microbiological species or strains." There are two (2) criteria for a proper requirement for restriction: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the examiner that restriction is required. An Examiner must provide reasons and/or examples to support such conclusions (See *Manual of Patent Examining Procedure* Section 803 (8<sup>th</sup> Edition, August 2001)). Applicants respectfully submit that the Examiner has not provided any evidence, specifically, any reasons and/or examples to support a *prima facie* showing of a serious burden therefore justifying the restriction of the species. Thereupon, Applicants respectfully request the restriction imposed upon the species (namely, the various microbiological species or strains), be removed.

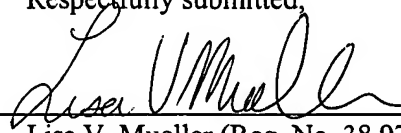
Finally, based upon the wording of the Request for Restriction, Applicants believe the election of a single bacterial strain (namely to *Gluconacetobacter diazotrophicus* PA15 (ATCC

No. 49037)) to be a provisional election of a single species and that if no prior art is found that anticipates or renders this species obvious and if a "generic" claim is allowed, that the Examiner will consider claims to the non-elected species. If this understanding is not correct, Applicants would appreciate clarification from the Examiner.

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,

By:



Lisa V. Mueller (Reg. No. 38,978)

Attorney for Applicant

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661  
(312)-876-1800

**CERTIFICATE OF MAILING**

I hereby certify that this Amendment is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington D.C., 20231 on a April 11<sup>th</sup>, 2003.

